IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STC No. 11 of 2006
Date of decision 20 .3.2007

M/s Jindal Pipe Store .. petitioner

Versus

State of Punjab .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.Aman Bansal, Advocate for the petitioner
Ms. Rita Kohli, Sr. DAG Punjab for the respondent .

M.M.Kumar, J.

This is an application filed under Section 22 of the Punjab General Sales Tax Act,1948 (for brevity 'the Punjab Act') with a prayer for referring the question of law emerging out of order dated 1.7.2005 passed by the Sales Tax Tribunal II Punjab. The applicant is a registered dealer under the Act and the Central Sales Tax Act, 1956 (for brevity 'the Central Act') dealing in submersible pump sets vehicle No. HR 37 A 9437 carrying submersible pumps was detained by the Excise and Taxation Officer, ICC (Import) at Shambhu Barrier. The goods were released and a penalty of Rs. 31,000/- was imposed under Section 14B(7)(ii) of the Act vide order dated 30.4.2003 (Annexure P.1). It is claimed that the goods were covered fully by two bills dated 19.4.2003 issued by the firm M/s Sabar Enterprises, Ambala City in favour of the applicant, which amounted to Rs. 39,479/- and Rs. 65,667/-. Even the appeal filed before the Deputy Excise and Taxation Commissioner (Appeals) has been dismissed on 14.9.2004 (Annexure P.2) and further appeal under Section 20 of the Act was

also dismissed by the Sales Tax Tribunal on 1.7.2005. The application for rectification of the order also met the same fate on 17.11.2005 (Annexures P.3 and P.4). It is appropriate to mention that the claim of the dealer that the goods are tax free was not accepted.

The following questions of law has been claimed by the applicant:

i) Whether the action of the concerned authorities below to decide the goods as taxable or tax free item in the summary proceedings is legally sustainable in the eyes of law;

ii) Whether Monoblock pumps and submersible pumps covered under item 34 D(1) or are used as agricultural implements?"

Learned counsel for the applicant has placed on record a copy of the order dated 25.11.2004 showing that for the accounting year 2003-04 the item submersible pump has been considered to be a tax free item by the assessing authority while framing regular assessment. A photo copy of the order has been taken on record as Mark "A".

The respondent- State has filed reply and has pleaded that under Section 22(1) of the Act, the applicant could have filed an application within a period of 60 days from the passing of order under Section 20 or 21 of the Act by the Tribunal with regard to any liability of a dealer to pay tax under the Act. It is claimed that the penalty having been imposed by the competent authority under Section 14B of the Act on 30.4.2003 which resulted into the

dismissal of Second appeal by the Tribunal on 1.7.2005. The reference application is also beyond 60 days.

After hearing learned counsel we are of the considered view that the application deserves to be allowed. In the present case the penalty against the petitioner has been upheld on the premises that submersible pumps being carried by the petitioner were taxable under the Act. Accordingly, intention to evade tax was inferred.It is not in dispute that the Assessing Authority has finalised the assessment of the assessment years 2002-03 and 2003-04 by accepting that submersible water pump is a tax free item. Once even during the course of regular assessment proceedings, the assessing authority dealt with and accepted the contention of the petitioner that submersible pumps being dealt with by the petitioner are tax free, there was no occasion with the check post authorities to hold otherwise and that too in the summary penalty proceedings. While dealing with the issue in the similar circumstances, this Court in **Civil Writ Petition No.16000 OF 2005 (M/s Makin Paper Mills Vs. State of Punjab and others)** decided on November 29, 2006 has held that order imposing penalty was without jurisdiction. Though in the present proceedings, the prayer made is for directing the Tribunal to refer the question of law to this Court in appeal, however, undisputed facts are already on record, the regular course, if follows, would unnecessarily delay the disposal of the case. With the consent of the parties, we have proceeded to answer the question at this stage. This Court has already held in **STC No.19 of 1992 (M/s Chaudhary Tractor Company, Tohana Distt. Sirsa Vs. State of Haryana)** decided on

May 29, 2006 relying upon its earlier judgment and referring to the judgments of Delhi and Andhra Pradesh High Courts have already held that such a course can be adopted. Accordingly, we answer the question No.1 in favour of the assessee and against the respondents by holding that in the facts and circumstances of the case, action of the authorities in determining the taxability of the goods in summary proceedings is not legally sustainable.

The petition is disposed of, accordingly.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

20.3.2007
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